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of trust, the analogy between the trust relation and the contractual relation is so close that the present decision seems eminently sound upon this point. But it is probable that the facts of the case did not present a trust relation; for a mere beneficiary under a promise made to a third party is not a *cestui que trust*. *In re Rotherham Alum & Chemical Co.*, 25 Ch. D. 103.

UNFAIR COMPETITION — COMBINATIONS — SELF-INTEREST A JUSTIFICATION. — Aiming to build up its own business at the expense of a rival, the defendant exchange passed a resolution which forbade any member from doing brokerage business for an active member of the rival exchange, under penalty of suspension or expulsion. A member of the defendant exchange thereupon notified the plaintiff, a member of the rival exchange, that he could transact no further business for him. *Held*, that the plaintiff cannot enjoin the enforcement of the resolution. *Heim v. N. Y. Stock Exchange*, 118 N. Y. Supp. 591 (Sup. Ct.).

Two lines of decisions support the legality of the resolution involved in the principal case. The first hold that a voluntary combination refusing to do business with outsiders is not even *prima facie* tortious. *American Live Stock Commission Co. v. Chicago Live Stock Exchange*, 143 Ill. 210. The second hold that although such combinations are *prima facie* tortious, they may frequently be justified by a proper motive, such as the desire for exclusive trade with customers. *Dunlap's Cable News Co. v. Stone*, 15 N. Y. Supp. 2. So, to obtain preferences in employment for members is sufficient justification. *National Fireproofing Co. v. Mason Builders' Assn.*, 169 Fed. 259. But if the object is solely to injure another, it is tortious. *Purington v. Hinchliff*, 219 Ill. 159, 166. In the principal case, the court properly found that the defendant's aim to build up its own business justified the resolution. The fact that a third party was thereby inconvenienced is immaterial. *National Protective Assn., etc. v. Cumming*, 170 N. Y. 315. As an active member of the rival exchange, however, the plaintiff could hardly claim even the neutrality of a third party. Had the resolution been enforced by heavy fines, it would have become coercive and a tort against the plaintiff. *Willcutt & Sons Co. v. Driscoll*, 200 Mass. 110. The plaintiff would then have been entitled to an injunction. *Willcutt & Sons Co. v. Driscoll*, *supra*. The *dictum* to the contrary in the principal case seems unfortunate. But suspension or expulsion is not coercion. *Booth & Bro. v. Burgess*, 72 N. J. Eq. 181, 196. Indeed, such measures seem essential to the discipline of any organization.

BOOK REVIEWS.

A TREATISE ON DAMAGES. By John D. Mayne. Eighth Edition. By Lumley Smith. London: Stevens and Haynes. 1909. pp. i, 766.

It is quite common to hear a law book referred to as the "leading" treatise on its subject; and the epithet is often more or less accurately applied. But no one can question it when applied to Mayne on Damages. That treatise occupies, in England, the place in the literature of damages occupied by Sedgwick in America. Published at first in 1856, a small volume of some three hundred and fifty pages, it has in fifty-four years passed through eight editions, the same number that Sedgwick has had in a little more than the same time. In his first edition, Mr. Mayne acknowledged his indebtedness to Sedgwick, but expressed the belief that there was still room for an English work. In this belief he seems to have been amply justified. At the start he attempted to collect all the English decisions; and to use American cases only when no English cases in point could be found; and in each edition since, the editors have aimed to collect all the English and Irish cases decided since the last previous edition. In each instance they express the belief that they have done so. No attempt has been made to collect American cases since the second edition, with the result that the eighth edition, a complete collection of English cases, required of the editor the consideration of some 3,800

cases as compared with 15,000 in the last edition of Sutherland on Damages. Mayne on Damages has increased in size steadily, but it is even now a small book compared with American treatises.

It is interesting to note that since the second edition, Judge Lumley Smith has been an editor. The second edition and the present one he edited alone; in the others he collaborated with the author. The fact that the editorial work throughout has been in the hands of the author and only one other editor, and he a well-trained lawyer, may account for the comparatively slight increase in bulk in the past thirty years. The plan and chapter arrangement have with one exception remained the same from the beginning. The present sixteenth chapter was added in the third edition.

In his preface to the present edition Judge Smith says that Mr. Mayne's forecasts have been justified by subsequent decisions in a very remarkable manner. Though true, it is perhaps not very remarkable after all, for when a book has been a classic for fifty years, the opinions of the author may well have moulded the law by furnishing the basis of the decisions of courts.

From what has been said it may be seen that the work would not be useful to American lawyers as a compendium or digest of cases, but as an analysis and statement of law on topics of general, rather than local application, such as the rule of *Hadley v. Baxendale* and of *Dulieu v. White*, and others of similar kind, it is of great value.

S. H. E. F.

THE LAW OF PERSONAL INJURIES ON RAILROADS. By Edward J. White. In two volumes. St. Louis: The F. H. Thomas Law Book Company. 1909. pp. clxiii, 826; xxxviii, 827-1739.

In his work covering the large field of personal injuries on railroads Mr. White has made two large divisions, to each of which he has allotted one volume. The first volume bears the title *Injuries to Employees*, and the second volume is called *Injuries to Passengers, Licensees, and Trespassers*.

In the first volume, before the rights of employees are set forth, the author devotes several chapters to the general law of torts and to the practice and procedure in railway accident cases, including such matters as the jurisdiction, the parties to an action for death, evidence, issues for the court and for the jury, and damages. These subdivisions are made in such a manner that the practitioner should be able to find the point at which his question is treated with very little effort. In general these prefatory subjects are treated as fully as can be expected in a book which is essentially given up to the rights of the parties. It is, perhaps, to be regretted that a little more space and consideration is not given to the questions of the conflict of laws, since it is so difficult to find problems of that sort dealt with in detail in any of the digests. Also it is to be regretted that the question of the allowance of punitive damages is covered without protest against the theory of the award of such damages. The main subject of injuries to employees is taken up in great detail, and frequent subheadings illustrating the questions that arise are explained by numerous examples in the decisions of the courts. The author is a strong advocate of the common-law rule as to the liability of the employer for injuries resulting from the negligence of co-employees and condemns modern statutes abrogating the rule and the motive which gives rise to the passage of such statutes. These statutes are given in detail and the decisions thereunder discussed.

The second volume covers the general relation of common carriers and passengers and the duties of the former to the latter, with the liability of the common carrier to the passenger for injuries arising from the acts of employees, of fellow passengers and of strangers. The rights of licensees and trespassers are also taken up in detail. The duties and liabilities of the carrier are divided in relation to the place where the injury may occur and the source of the injury and to the position of the person injured at the time of its occurrence. Thus the liability for injuries arising from defects in roadbed and track, stations and ap-